



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA- 173877

PRELIMINARY RECITALS

On April 21, 2016, the above petitioner filed a hearing request under Wis. Stat 49.45(5) and Wis. Admin Code HA 3.03(1), to challenge a decision by the Division of Health Care Access and Accountability by [REDACTED], RN, BSN (in writing) regarding Medical Assistance. The hearing was held on May 25, 2016, by telephone..

The issue for determination is whether the Department erred in its denial of petitioner's PA request # [REDACTED] for PCW services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services 1 West Wilson Street,
Room 651 Madison, Wisconsin 53703

Division of Health Care Access and
Accountability by [REDACTED], RN,
BSN (in writing)
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:
John Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has a history of osteoarthritis, rheumatoid arthritis, chronic fatigue, fibromyalgia, and other complaints of pain.
3. On 2/22/16 the Department received a PA request from petitioner's provider, Life Liberty Home Health, LLC, for 22 hours per week of PCW services. The request included a personal care screening tool (completed on 2/18/16) which assessed petitioner's PCW needs at 11 hours per week.
4. Records of physical therapy visits from later 2015 and early 2016 were submitted. These PT records indicate that petitioner does not attend PT with the recommended frequency. The records indicate no clinically significant findings and indicate that increased mobility and pain management are achievable.
5. A PT clinical record from 1/6/16 indicates that petitioner is able to walk 6 city blocks and to carry 10 pounds frequently.
6. Another PT record from 1/26/16 indicates that petitioner's efforts during an evaluation were inconsistent. The PT notes her ability to carry a large purse and drive her own car. The writer indicated less than optimal effort.
7. Petitioner lives with relatives. Petitioner's caregiver is one of her relatives.
8. The request was denied.
9. Petitioner appealed.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. The Code also provides that, "No more than one-third of the time spent by a personal care worker may be in performing housekeeping activities." Wis. Adm. Code, § DHS 107.112(3)(e).

In determining the number of PCW hours to authorize, the OIG uses the standard above along with the general medical necessity standard found at Wis. Adm. Code, § DHS 101.03(96m). Essentially the medical necessity standard requires a service to be basic and necessary for treatment of an illness, not necessarily the best service possible, and not just for convenience. To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool (PCST), a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The PCST allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

In the case of PCW services, MA pays only for medically-oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). Covered PCW services include only the following:

- 1. Assistance with bathing;*
- 2. Assistance with getting in and out of bed;*
- 3. Teeth, mouth, denture and hair care;*
- 4. Assistance with mobility and ambulation including use of walker, cane or crutches;*
- 5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;*
- 6. Skin care excluding wound care;*
- 7. Care of eyeglasses and hearing aids;*
- 8. Assistance with dressing and undressing;*
- 9. Toileting, including use and care of bedpan, urinal, commode or toilet;*
- 10. Light cleaning in essential areas of the home used during personal care service activities;*
- 11. Meal preparation, food purchasing and meal serving;*
- 12. Simple transfers including bed to chair or wheelchair and reverse; and*
- 13. Accompanying the recipient to obtain medical diagnosis and treatment.*

Wis. Admin. Code § DHS 107.112(1)(b).

It is petitioner's burden to establish the necessity of the requested time. The Department denied the request because the documentation submitted and the whole of the considered medical record does not support the need for PCW services. The consultant questions what, in the medical record, supports a finding of medical necessity for PCW services. I have to agree. In order for the petitioner to meet her burden, she would need to adequately rebut the assessments by various medical professionals' notes in her record who appear to believe that she is either embellishing her functional limitations or fabricating symptoms. I do not know if this is what is happening. But, certainly, petitioner needs to bring a much more credible and persuasive case in order to overcome the lacking support in the record by numerous providers.

At the time of hearing, petitioner did not offer testimony of the caregiver's or any health professional. Petitioner did not offer any testimony other than her own. Petitioner's caregiver is her daughter which gives me reason to consider the motive of petitioner to request PCW hours as that money is literally paid to her family. Had petitioner come with a well-documented case and corroboration from health professionals to support medical necessity then she may have met her burden. But, on this record petitioner has not convinced me that the Department's assessment of the request is wrong.

CONCLUSIONS OF LAW

The Division did not err in modifying the PA request.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

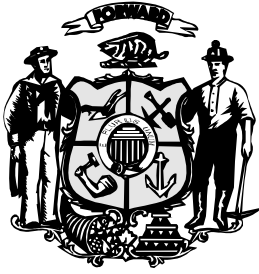
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services 1 West Wilson Street, Room 651 Madison, Wisconsin 53703, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of July, 2016

\s _____
John Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 7, 2016.

Division of Health Care Access and Accountability